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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1944**

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# No. 705

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MART M. MONAGHAN,

*Appellant,*

*vs.*

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL C. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. McCARTHY, A. A. McRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK AND WASHINGTON YALE, AND MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION,

*Appellees*

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## JURISDICTIONAL STATEMENT

Appellant, having this day filed his Petition for Appeal and Assignment of Errors in the above entitled cause for an appeal to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Minnesota, entered herein on the 12th day of August, 1944, presents the following statement pursuant to Rule 12 of the Rules of the Supreme Court of the United States, showing that the Supreme Court of the United States has jurisdiction to review said judgment on appeal and that such jurisdiction should be exercised in this case.

## I

### Statutory Provisions Sustaining Jurisdiction

The jurisdiction of this Court is invoked under Section 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. Section 344(a)), and, also, in the alternative, under Section 237 (c) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. Section 344 (c)), as a petition for certiorari if the case is not a proper subject of a petition for appeal under said Section 237 (a).

## II

### The Minnesota Statute the Validity of Which Is Involved

Laws of Minnesota for 1943, Chapter 500, Sections 1 to 24, inclusive, was passed and approved April 19, 1943, to "take effect and be in force from and after July 6, 1943". It is incorporated, in part, in *Minnesota Statutes* 1941 (Supplement) as Sections 360.101 to 360.123. It is also incorporated in full in *Mason's Minnesota Statutes, 1927, 1944 Supplement,* Sections 5494-101 to 5494-124.

It provides, in part, as follows:

> "Sec. 3. Subdivision 1. *Public Corporation Created.* —For the purposes herein provided there shall be created a public corporation in and for any two contiguous cities of the first class in this state, to be known as the Metropolitan Airports Commission of those cities."
>
> (Cities of the first class in Minnesota are those cities having a population of 50,000 or more.)
>
> • • • "Sec. 9. Subdivision 1. *Exercise of powers.* —Immediately after the adoption and filing of its permanent plan of operation, the corporation shall pro-

ceed to exercise the powers herein granted. These powers may be exercised at any place within 25 miles of the city hall of either city."

"Subd. 2. Immediately following the adoption and filing of its permanent plan of operation, the corporation shall and is hereby directed to take over the use, management, operation, regulation, policing and control of any or all airports owned by either city, whether said airports are then under the management and control of, or title thereto is held in the name of the city itself, the council, a board of park commissioners, or any other body; consent by each city, the council, the board of park commissioners, and any other agency, board, or department thereof, to such use, management, operation, regulation, policing, and control to be conclusively presumed to have been given by the appointment of commissioners pursuant to the provisions of this act. Authority is hereby granted to the mayor and council of each city and any board or commission having jurisdiction of airports in either city to give such consent in that manner. Immediately upon taking over the use, management, operation, regulation, policing and control of any such airport or airports the corporation may exercise all the powers herein granted to it with reference to any airport property, except the right of leasing or disposing of the fee title to the lands included therein, *without the payment of any rental therefor,* from the date of such taking over. The title to the fee of the land included in each airport shall remain in the city, or agency, board, or department of such city, then owning it. The action to be taken pursuant to the provisions of this subdivision of this section is declared to be necessary in order to provide an integrated airports system and enable the corporation to carry out the public and governmental purposes of this act. The corporation shall not close any existing airport in either city to air freight commerce consigned to or originating in such city unless and until it provides for such city, freight and airport facilities which, in the judgment of the corporation,

are as substantially equal in convenience and safety to the business and industries of that city as are the existing freight airport facilities *now available* (except as the same may be restricted by governmental use) to its business and industries. For the purpose of this subdivision only the word 'airport' shall include only the lands, buildings, and equipment acquired for use primarily for any such airport so taken over as in this subdivision provided."

"Subd. 3. The authority in Subdivision 2 of this section granted to the corporation is not conditioned upon the receipt of any appropriation in this act provided for. Each city involved or any board or commission of such city, shall pay the balance due on its bonds which have prior to the enactment of this act been issued pursuant to law or charter to secure funds for the acquisition, establishment, construction, enlargement or improvement of the airports to be taken over as provided in Subdivision 2, according to the terms of such bonds. The corporation created by this act may, however, if it shall so determine, assume the payment of part or all of the balance due on such bonds at the time of its taking over the use, management, operation, regulation, policing and control of such airports."

* * * * * * *

"Sec. 12 * * * Subd. 4 (1) There is hereby created a special fund to be known as the Minnesota Metropolitan Airports Fund, to be used for the purposes hereinafter specified. To provide moneys for the fund the state auditor is hereby authorized and directed to levy upon all taxable property in the state, in the manner in which other state taxes are levied, for the taxable years of 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952 and 1953, taxes sufficient to produce the sum of $100,000 for each of said taxable years, together with such additional sums as may be necessary to pay the interest upon the certificates of indebtedness hereinafter authorized. In case of a deficiency in the

proceeds of such tax levy for any year, the auditor shall levy sufficient additional amounts in succeeding years to compensate therefor until the full amount herein authorized has been raised. The proceeds of such taxes shall be credited to the Minnesota Metropolitan Airports Fund.

"(2) Pending the levy and collection of such taxes, upon request of the governor, the state auditor is hereby authorized and directed to issue and sell certificates of indebtedness of the state as funds are needed for the purposes of this act, not exceeding the amount required from time to time to meet the appropriations hereinafter made and not exceeding $1,000,000 in the aggregate. Such certificates shall be known as Minnesota Metropolitan Airports Certificates of Indebtedness, shall be numbered consecutively, and shall be issued and sold at not less than par upon sealed bids after two weeks,' published notice, unless sold to the State Board of Investment as hereinafter provided. Such certificates shall be in such form and of such denominations and shall mature at such times as the auditor may determine, not exceeding the time when funds shall be available for the payment thereof from the tax levies authorized by paragraph (1) of this subdivision. Such certificates shall bear such rate of interest, payable semiannually, and shall contain such other terms and provisions, not inconsistent herewith, as the auditor may determine. Such certificates shall be signed by the state treasurer and attested by the state auditor under their official seals, and the auditor and treasurer shall keep records thereof. Such certificates shall be a charge upon and a lien against the taxes authorized by paragraph (1) of this subdivision. The principal and interest of such certificates shall be payable only from the proceeds of such taxes, and so much thereof as may be necessary is hereby appropriated for such payments; provided, that such interest as may become due at any time when there is not on hand a sufficient amount from the proceeds of such taxes to pay the same shall be paid out of the general revenue fund,

and the amount necessary therefor is hereby appropriated, to be reimbursed from the proceeds of such taxes when received. All moneys received from the sale of such certificates shall be credited to the Minnesota Metropolitan Airports Fund.

"(3) The State Board of Investment is hereby authorized to invest any funds under its control or direction in any certificates of indebtedness issued hereunder and to purchase such certificates at a rate of interest not exceeding three per cent per annum, and such certificates may be issued and sold to the board without advertising for bids.

"(4) There is hereby appropriated to the governor out of the Minnesota Metropolitan Airports Fund, for the purposes hereinafter specified, the sum of $1,000,000, for the biennium period ending June 30, 1945, of which $500,000 shall be available for the fiscal year ending June 30, 1944, and $500,000 available for the fiscal year ending June 30, 1945. Any balance remaining at the end of any fiscal year shall be carried over and shall be available for the purposes of this act until July 1, 1945, and thereafter until all obligations theretofore incurred hereunder have been paid."

## III

### Date of Judgment Sought to Be Reviewed and Date on Which Application for Appeal Is Presented

The judgment sought to be reviewed by this appeal was a final judgment, entered by the Supreme Court of Minnesota on the 12th day of August, 1944. The Supreme Court of the State of Minnesota is the highest court of that State in which a decision in this case can be had.

## IV

## The Nature of the Case and Rulings of the Court on Federal Questions

1. *General Nature*

The action was brought on March 31, 1944, in the District Court, Fourth Judicial District, State of Minnesota, to restrain the individual members of the Minneapolis Park Board, temporarily and thereafter permanently, from turning over, surrendering, selling or giving to the Minneapolis-St. Paul Metropolitan Airports Commission or to its members the use, management, operation or control, the possession or right to possession, or any title or interest in or to the Minneapolis Municipal Airport, the land whereon it is located, or any of its equipment or appurtenances.

The basis of the action that the Minneapolis Park Board and its members were about to turn over the Minneapolis Airport to the Metropolitan Airports Commission without exacting, obtaining or being paid or promised an adequate or any consideration therefor and without the payment of any price, rental or consideration therefor, and, were about to do those things without authority, warrant, or justification, except as given by Laws of Minnesota, Chapter 500, which law is unconstitutional and void as repugnant to the Federal Constitution—Amendments Article XIV, Section 1, providing: "Nor shall any state deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

2. *Rulings of Trial Court*

The complaint in said action set out among other things:

"VII

That said Law, Chapter 500 of the Laws is unconstitutional and void. It is in contravention of the provisions

of Article XIV, Section 1 of the Amendment to the Constitution of the United States providing: 'Nor shall any state deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws' * * *"

The Minneapolis-St. Paul Metropolitan Airports Commission intervened.

The defendants and the intervener demurred to said complaint as not stating a cause of action.

The trial court on June 8, 1944, sustained the demurrer stating in its memorandum, made a part of the order sustaining the demurrer: "Plaintiff attacks the constitutionality of Chapter 500, Laws 1943, the act creating the Minneapolis-St. Paul Airports Commission on three grounds: 1. That it is violative of the 14th Amendment to the Federal Constitution, Section 1, providing that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. * * *"

3. *Rulings of Minnesota Supreme Court*

In affirming the order of the trial court sustaining the demurrer to plaintiff-appellant's complaint, the Supreme Court of Minnesota says, in part:

> "We therefore hold that Chapter 500, in authorizing the transfer of the use and possession of the Municipal Airport to the commission without compensation to the city or to the park board, does not violate the Fourteenth Amendment to the Constitution of the United States."

And in denying a rehearing that court said, in part:

> "Nor do we see any violation of the Fourteenth Amendment to the federal constitution, since we see no infringement of the equal protection clause."

## V

### Cases Believed to Sustain Jurisdiction

The following decisions of this Court are believed to sustain the jurisdiction of the Supreme Court of the United States on an appeal to review the final judgment here in question, within the provisions of said Section 237 (a) of the Judicial Code, as amended (28 U. S. C. A. Section 344(a)):

*Standard Oil Company of California* v. *Johnson* (1941), 316 U. S. 481, 86 L. Ed. 1611, 62 S. Ct. 1168, wherein it was said:

> "Since the validity of the state statute as construed was drawn in question on the ground of its being repugnant to the constitution, we think the case is properly here in appeal under Sec. 237 (a) of the Judicial Code, 28 U. S. C. A. Sec. 344 (a)."

Fiske *v.* State of Kansas (1927) 274 U. S. 380, 71 L. Ed. 1108, 47 S. Ct. 655;

New York Ex Rel. Bryant *v.* Zimmerman (1928) 278 U. S. 63, 73 L. Ed. 184, 49 S. Ct. 61;

Dotz *v.* Love (1935) 295 U. S. 64, 79 L. Ed. 1303, 55 S. Ct. 558;

Dahnke-Walker Milling Co. *v.* Bondurant (1921), 257 U. S. 282, 66 L. Ed. 239, 42 S. Ct. 106, involving the constitutionality of a state statute, wherein it was said:

> "Our conclusion on the jurisdiction at question is that, as the state court applied and enforced to plaintiff's disadvantage a state statute which plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error."

Eureka Pipe Line Co. *v.* Hallanan (1921) 257 U. S. 265, 66 L. Ed. 227, 42 S. Ct. 101.

United Fuel Gas Co. *v.* Hallanan (1921) 257 U. S. 277, 66 L. Ed. 234, 42 S. Ct. 105.

Miedreich v. Lauenstein (Ind. 1914) 232 U. S. 236, 58 L. Ed. 584, 34 S. Ct. 309.

Where a state court holds that a federal question is made before it, according to its practice, and proceeds to determine it, the Supreme Court of the United States will regard the question as duly raised.

A proceeding for a writ of prohibition to restrain a municipality from carrying a municipal ordinance into effect, because of its repugnancy to the federal constitution is a "suit".

Weston *v.* City Council of Charleston (S. C. 1829) 27 U. S. (2 Pet.) 449, 7 L. Ed. 481.

And the same case holds that a "final judgment" is one which determines the particular cause, and, where a prohibition is applied for to restrain a party from doing an act alleged to be repugnant to the federal constitution and the court refuses to grant it on the ground that the statute which authorizes such act does not violate the constitution, a writ of error lies. Constitutional questions passed on by State Appellate Court can be considered by U. S. Supreme Court even if not properly raised in lower court.

Whitfield *v.* State of Ohio 277 U. S. 431.

A judgment of a State Supreme Court affirming the refusal of a lower court to continue a temporary restraining order, and to grant a permanent injunction on the petition and answer, and leaving nothing for the lower court to do but dismiss the petition, is a final judgment and reviewable by certiorari under Section 237 (a) of the Judicial Code, as amended (28 U. S. C. A. Section 344 (a)).

The state Supreme Court having expressly passed upon the federal question raised on petition for rehearing it is immaterial that that precise question may not have been raised in the court below.

North Carolina R. Co. *v.* Zachary (N. C. 1914) 232 U. S. 248, 58 L. Ed. 591, 34 S. Ct. 305.

Missouri Ex. Rel. Missouri Ins. Co. *v.* Gehner (1930) 281 U. S. 313, 47 L. Ed. 870, 50 S. Ct. 326.

Cumberland Coal Co. v. Board of Revision (1931) 284 U. S. 23, 76 L. Ed. 147, 52 S. Ct. 48.

Home Ins. Co. *v.* Dich (1930) 281 U. S. 397, 74 L. Ed. 926, 50 S. Ct. 338.
Concordia Fire Ins. Co. *v.* Illinois (1934) 292 U. S. 535, 78 L. Ed. 1411, 54 S. Ct. 830.

## VI

### Statement of Grounds Upon Which It Is Contended That Questions Involved Are Substantial

As a matter of general public policy, the state court decided at least four broad federal questions of legislative power which are of national importance and significance under the Fourteenth Amendment to the Constitution of the United States:

(a) It decided that a state legislature has the power, within the due process clause of the Fourteenth Amendment, to take without compensation the property of a city owned in its private or proprietary character, in which it has had a vested interest of fifteen years standing, from which it derives a profit of upwards of $16800 a year.

(b) It decided that a state legislature has the power within the due process clause of the Fourteenth Amendment to the federal constitution, to take from the taxpayers without compensation their vested interest in that property and in that going and profitable business enterprise, and in addition, to impose on the taxpayer the burden of paying the principal and interest on the bonds issued to raise the capital invested in said enterprise.

(c) It decided that neither the city nor the taxpayers of the city are in a position to invoke the due process clause of the federal constitution as against the state in taking, without compensation, such privately owned property and the rentals thereof and the profit therefrom, the title to which was held in trust by the city for the benefit of its taxpayers.

(d) It decided that the taxpayers, mulcted of thousands of dollars by the seizure of the rentals and profits from that business enterprise, and by the imposition of the burden of paying the bonds which furnished the capital for the same, have no redress under the equal protective clause where a million dollar fund is provided by Chapter 500, Laws of 1943 now for expenses incurred by the present Metropolitan Airports Commission prior to 1945, and no provision is made for the Metropolitan Airports Commission of future contiguous cities of the first class.

Such decisions raise substantial federal questions which we believe have not been decided by this court.

## VII

### Acquisition of Property

As pointed out in appellant's Reply Brief on appeal to the Minnesota Supreme Court, the records of the Registrar of Titles of Hennepin County, Minnesota, in Volume 134, Certificate No. 42992, dated August 28, 1928, shows that there was filed on that date, document No. 79993, dated June 21, 1928, conveying from Snelling Field, Inc. to the City of Minneapolis the land now known as Wold-Chamberlain Field, or Minneapolis Municipal Airport.

Laws of Minnesota for 1927, Chapter 62, authorizes the Minneapolis Park Board to acquire by purchase, gift, condemnation or otherwise "All land necessary or convenient for the purpose of establishing and maintaining a municipal flying field." Nothing is said about it being held in a governmental capacity. On the contrary the Park Board is authorized "to lease such portions of said land so designated for a flying field to the U. S. Government for the purposes of the air mail or for other public purposes, *and to the State of Minnesota or any branch of the state government for public purposes.*

Under this act the Park Board completed the acquisition of 325 acres of land for the airport in August, 1928.

**Points and Authorities**

This is a suit by taxpayers against the members of the city park board, and not in any sense a suit by the city against the state.

We wish to cite in this connection *City of Hazzard* v. *Duff* (1941) 287 Ky. 427, an action by the city to enjoin an execution levied on a brick building which the court held was owned by the city in a proprietary capacity, the court says:

> "Taxpayers of the municipality became the owners of the business thus authorized to be conducted and while acting in that capacity the municipality is subject to the liabilities of any corporation or association engaged in like or similar enterprises, 19 R. C. L. Sec. 9 page 697, and its property used in its private capacity is subject to execution."

In *Hoppe* v. *City of Winona* 113 Minn. 252 (259), it is said:

> "It is clear that the bridge was the private property of the city, and held, owned and maintained in its proprietary capacity. * * * Travel thereon was limited to those who paid the prescribed toll, receipts from which went into the city treasury."

In the case of *New Orleans* v. *New Orleans Waterworks*, 142 U. S. 79 (91), this court says "a municipality being a mere agent of the state, stands in its governmental or public character in no contract relation with its sovereign. * * * While with respect to its private or proprietary rights and interests it may be entitled to constitutional protection."

In *Worcester* v. *Worcester Street Ry Co.* 196 U. S. 539 (551), this court says:

> "In general it may be conceded that it can own private property, not of a public or governmental nature, and that such property may be entitled, as is said, 'to constitutional protection'. Property which is held by these corporations upon conditions or terms contained in a grant, and for a special use, may not be diverted by the legislature."

The case of *City of Trenton* v. *State of New Jersey* 262 U. S. 182, 67 Law. Ed. 937, was an attempt on the part of the city, as such, and as distinguished from its citizens and taxpayers, to invoke the 14th Amendment.

This court recognized the distinction, saying (page 185):

> "The relations existing between the state and the water company were not the same as those between the state and the city. The company was organized and carried on its business for pecuniary profit. Its rights and property were privately owned and therefore safeguarded by the constitutional provisions here sought to be invoked by the city against the legislation of the state."

Now, our property in the airport, our property in the hangars, our property in the rentals from those hangars which went into the city treasury, are privately owned properties, and our right not to be saddled with the burden of paying $327,600.00 in bonds and interest is a private right, and therefore "safeguarded by the constitutional provisions".

In the *Trenton* case, supra, the question before the court for decision was the validity of an act imposing a license fee, for taking water in excess of a certain amount from the Delaware River. The court says:

> "The court of errors and appeals held that it was valid; that the state, under its police power, might impose a

> license fee as specified in the act * * * The state undoubtedly has power, and it is its duty, to control and conserve the use of its water resources for the benefit of all its inhabitants and the Act of 1907 was passed pursuant to the policy of the state to prevent waste and to economize *its* water resources."

That was the end of the case, so far as the validity of the act was concerned. If the state properly acted under its *police powers,* there was not and could not be any question of violating the constitution. Any statement as to the rights of a city in connection with is private or proprietary holdings to raise constitutional questions under the Fourteenth Amendment was, we respectfully suggest, obiter dictum.

The opinion and decision of the Supreme Court of Minnesota and the opinion denying the rehearing are not yet published in the official Minnesota Reports, but, are published in Volume 15, page 241, of the Northwestern Reporter, (advance sheets.) 2nd Series.

Wherefore, Appellant respectfully submits statement and prays the order of this court allowing this appeal for review of the judgment of the Supreme Court of the State of Minnesota, entered in the above entitled cause on August 12, 1944,

Respectfully submitted,

MART M. MONAGHAN,
*Appellant Pro Se,*
*815 Palace Building,*
*Minneapolis, Minnesota.*

## APPENDIX A

No. 154 Hennepin County Loring, C. J.

33884

MART M. MONAGHAN, *Appellant,*

*v.*

MRS. MAUDE D. ARMATAGE, et al., *Respondents,*

THE MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION, *Interveners*

Endorsed: Filed July 7, 1944. Grace Kaercher Davis, Clerk Minnesota Supreme Court.

### Syllabus

1. L. 1943, c. 500, is not special as distinguished from general legislation merely because at the time it was passed there was but one group of two contiguous cities of the first class to which it could be applied, if the classification was not arbitrary or special, but applicable generally and uniformly throughout the state.

2. The classification of airports for contiguous cities of the first class, as distinguished from single cities or non-contiguous ones, was justified as based on a substantial distinction germane to the subject matter of L. 1943, c. 500.

3. Certain provisions of c. 500 considered and *held* to be procedural and directory rather than substantive, and not intended by the legislature to modify the substantive provisions of the chapter, following Bielke *v.* American Crystal Sugar Co. 206 Minn. 308, 312, 288 N. W. 584, 586.

4. The provisions of c. 500 authorizing the transfer without compensation of the use and possession of the municipal airport from the park board of Minneapolis to the commission authorized by the chapter is not a violation of Minn. Const. art. 1, § 13.

5. Regardless of whether the city of Minneapolis holds its municipal airport for a proprietary or a governmental

purpose, neither it nor its park board is in a position to invoke the due process clause of U. S. Const. Amendment XIV, as against the state itself, or its agency duly created and empowered by the legislature to take over without compensation the possession and use of the municipal airport.

Affirmed.

## Opinion

LORING, *Chief Justice:*

The plaintiff-appellant brought this suit to restrain the Minneapolis park board from transferring the possession and use of the municipal airport in that city to the Minneapolis-St. Paul Metropolitan Airports Commission created under authority of L. 1943, c. 500. That act is discussed in case number 33874, Erickson v. King, — Minn. —, 15 N. W. (2d) 201, filed herewith. The commission intervened in support of the defendants' demurrer to the complaint on the ground that it did not state a cause of action.

In this case the contentions of the appellant are that L. 1943, c. 500, is special legislation in violation of Minn. Const. art. 4, §§ 33, 34, and that it attempts to take from the city of Minneapolis its property in the municipal airport without compensation, in violation of the due process clause of U. S. Const. Amendment XIV, as well as Minn. Const. art. 1 § 13, which forbids the taking of private property for public use without just compensation.

1. Chapter 500, § 3, subd. 2, specifically provides:

> "This act is expressly declared to be applicable to all such cities whether or not they are now or hereafter existing under a charter framed and adopted under Section 36 of Article IV of the state constitution."

Obviously, it was intended by the legislature that the act should be general and not special legislation, and that it should operate generally and uniformly throughout the state. The fact that at present there is but one group of two contiguous cities of the first class to which it can be applied does not compel the conclusion that it is special legislation if the classification is not arbitrary or special,

but applicable generally and uniformly throughout the state. Board of Education v. Borgen, 192 Minn. 367, 256 N. W. 894.

2. That a classification of airports for contiguous cities of the first class, as distinguished from single cities or non-contiguous ones, is justified as based on a substantial distinction is obvious from the necessity for unified control of the equipment of modern airport facilities such as radio beams and the like in such contiguous cities. Erickson v. King, — Minn. —, 15 N. W. (2d) 201, *supra*. We think the classification is germane to the purpose of the law.

3. Appellant relies largely upon certain provisions of the act which he contends make the act impossible of application to any cities which in the future may become contiguous cities of the first class. For instance, § 4, subd. 1, providing for the membership of the commission thereby created, requires that one of such members shall be—

> "• • • a member of the board of commissioners having jurisdiction *at the time of the passage of this act* of airports of each of the respective cities, • • •." (Italics supplied.)

Section 4, subd. 3, provides:

> *"Within 30 days after the effective date of this act, the commissioners shall be selected as provided in Subdivision 1 of this section."* (Italics supplied.)

Section 24 provides:

> "This act shall take effect and be in force from and after July 6, 1943."

We seek the legislative intent in the light of other provisions in the act, and especially in the light of the avowed purpose to enact a general law which shall apply to municipalities which in the future shall become contiguous cities of the first class. If a construction of the act or an application of it is tenable which achieves that purpose, it is our duty so to construe and apply the act.

The provisions cited by appellant are procedural and directory rather than substantive, and are intended to

implement, not to modify, the substantive provisions setting up the governmental instrumentality. The distinction between substantive provisions and those which are merely procedural and directory is clearly expounded in the opinion of the late Mr. Justice Stone, who spoke for this court in Bielke v. American Crystal Sugar Co. 206 Minn. 308, 312, *et seq.*, 288 N. W. 584, 586, *et seq.* We need not repeat what is there said. These procedural provisions are not of the essence of the act, and we hold that they do not rob it of its character as general as distinguished from special legislation. We see no violation of Minn. Const. art. 4, §§ 33, 34.

4. We come now to the contention that the transfer of the use and possession of the municipal airport from the city park board to the commission is a taking without compensation. For the reasons stated under paragraph 5 of this opinion, the taking is not the taking of private property in violation of Minn. Const. art. 1, § 13.

5. The remaining question is whether Minneapolis has such a proprietary interest in the airport that its use and possession cannot be taken without compensation by the state acting through the commission authorized by c. 500. Is the city, as a state agency for the exercise of governmental powers, in a position to invoke the Fourteenth Amendment as against the state itself or its agency duly created and empowered by the legislature to take over the possession and use of municipal property?

A municipality is merely a department of the state, a political subdivision created as a convenient agency for the exercise of such governmental powers as may be entrusted to it. City of Trenton v. New Jersey, 262 U. S. 182, 43 S. Ct. 534, 67 L. ed. 937, 29 A. L. R. 1471. Absent constitutional restriction, the legislature may at its pleasure modify or withdraw any powers so entrusted to a city, hold such powers itself, or vest them in other agencies. Hunter v. City of Pittsburgh, 207 U. S. 161, 178, 179, 28 S. Ct. 40, 46, 52 L. ed. 151, 159, cited with approval in City of Trenton v. New Jersey, *supra*.

Minn. Const. art. 4, § 36, specifically preserves the right in the legislature to provide general laws paramount to home-rule charters. See State ex rel. Smith v. City of In-

ternational Falls, 132 Minn. 298, 156 N. W. 249; State ex rel. Erickson v. Gram, 169 Minn. 69, 210 N. W. 616.

The United States Supreme Court, speaking through Mr. Justice Butler in City of Trenton v. New Jersey, *supra,* said (262 U. S. 188, 43 S. Ct. 537, 67 L. ed. 941):

> "* * * This Court has never held that these subdivisions may invoke such restraints [the Fourteenth Amendment and the contract clause] upon the power of the State."

It further said in the same case (262 U. S. 189, 43 S. Ct. 537, 67 L. ed. 942), speaking of Town of East Hartford v. Hartford Bridge Co. 51 U. S. (10 How.) 511, 533, 534, 536, 13 L. ed. 518, 527-529:

> "* * * The reasons given in the opinion (pp. 533, 534) support the contention of the State here made that the City cannot possess a contract with the State which may not be changed or regulated by state legislation."

The opinion in City of Trenton v. New Jersey, *supra,* quoted with approval the exposition of the principles now under consideration contained in Hunter v. City of Pittsburgh, 207 U. S. 161, 178, 179, 28 S. Ct. 40, 46, 52 L. ed. 151, 159, as follows (262 U. S. 186, 43 S. Ct. 536, 67 L. ed. 941):

> "The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or con-

tract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. * * * The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

And still further in the City of Trenton case, in speaking of the distinction made in tort cases between proprietary and governmental purposes, the court said (262 U. S. 192, 43 S. Ct. 538, 67 L. ed. 943):

"* * * But such distinction furnishes no ground for the application of constitutional restraints * * *. They do not apply as against the State in favor of its own municipalities."

A city holds its property for public purposes whether in furtherance of a proprietary or governmental purpose. It holds it subject to the paramount power of the legislature, whose creature it is. The answer to the question before us becomes simple in the light of a realization that the city is but a subdivision of the legislative branch of government and always subject to the paramount power of the legislature, its creator. The legal situation is no different from that where the state itself holds the property and subjects it to a different or greater use.

In State ex rel. School District v. County Board, 126 Minn. 209, 212, 148 N. W. 53, 54, this court said:

"* * * The case is controlled by the further rule that the legislature, having plenary control of the local municipality, of its creation, and of all its affairs, has the right to authorize or direct the expenditure of money in its treasury, though raised for a particular purpose, for any legitimate municipal purpose, or to

order and direct a distribution thereof upon a division of the territory into separate municipalities. * * * The local municipality has no such vested right in or to its public funds, like that which the Constitution protects in the individual, as precludes legislative interference. People v. Power, 25 Ill. 187; State Board of Education v. City, 56 Miss. 518. As remarked by the Supreme Court of Maryland in Mayor v. Sehner, 37 Md. 180: 'It is of the essence of such a corporation, that the government has the sole right as trustee of the public interest, at its own good will and pleasure, to inspect, regulate, control and direct the corporation, its funds, and franchises.' "

We therefore hold that c. 500, in authorizing the transfer of the use and possession of the municipal airport to the commission without compensation to the city or to the park board, does not violate the Fourteenth Amendment to the Constitution of the United States.

Order affirmed.

LORING, C. J.

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## APPENDIX B

No. 154 Hennepin County Per Curiam

33884

MART M. MONAGHAN, *Appellant*,

*v.*

MRS. MAUDE D. ARMATAGE, ET AL., Respondents,

THE MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION, *Intervenors.*

Endorsed: Filed July 28, 1944. Grace Kaercher Davis, Clerk Minnesota Supreme Court.

### On Petition for Rehearing

PER CURIAM:

Appellant now challenges the constitutionality of Ch. 500 as contravening Minn. Const. art. 4, § 34, which pro-

vides that "all such laws shall be uniform in their operation throughout the state." We find no lack of uniformity in the application of Ch. 500. It not only applies to all present and future contiguous cities of the first class but includes provisions for support of municipal airports which further the objectives of the act. Of course, if the appropriation made by the act is exhausted the legislature may or may not enlarge it as it is advised, but so long as the appropriation is available it appears it is applicable uniformly throughout the state. The legislature need not provide at this time for all future commissions which may come under the law.

Nor do we see any violation of the Fourteenth Amendment to the federal constitution, since we see no infringement of the equal protection clause. All are treated alike who come within the act.

Petition denied.

(5418)